

Amendments to House Bill No. 119
1st Reading Copy

Requested by Representative Tom Berry

For the House Business and Labor Committee

Prepared by Pat Murdo
February 5, 2015 (8:11am)

1. Page 2.

Following: line 8

Insert: "(2) "NAIC" means the national association of insurance commissioners."

Renumber: subsequent subsections

2. Page 2, line 10.

Following: "adopted by"

Insert: "the"

3. Page 2, line 11.

Following: "commissioner."

Insert: "A change to the ORSA guidance manual is effective on January 1 following the calendar year in which the commissioner adopts the changed manual by rule."

4. Page 2, line 14.

Following: "assessment"

Insert: ", appropriate to the nature, scale, and complexity of an insurer or insurance group,"

5. Page 2, line 18.

Strike: "a study"

Insert: "of the elements used"

6. Page 3.

Following: line 13

Insert: "(3) The report must be prepared consistent with the ORSA guidance manual and this section. Documentation and supporting information must be maintained and made available for an examination or on request of the commissioner."

Renumber: subsequent subsection

7. Page 3.

Following: line 21

Insert: "(5) An insurer may comply with this section by providing

the most recent and substantially similar report provided by the insurer or another member of an insurance group of which the insurer is a member to the insurance regulator of another state or to a supervisor or regulator of a foreign jurisdiction, if that report provides information that is comparable to the information described in the ORSA guidance manual. A report in a language other than English must be accompanied by a translation of the report into English."

8. Page 3, line 24.

Strike: "completing an ORSA summary report"

Insert: "the requirements of [sections 1 through 9]"

9. Page 4, line 22.

Strike: the second "or"

10. Page 4, line 23.

Following: "33-2-1904"

Insert: ";

(iii) if the insurer is in hazardous financial condition as described in 33-2-1321; or

(iv) if the insurer exhibits the qualities of a troubled insurer as determined by the commissioner"

11. Page 4.

Following: line 26

Insert: "(6) If an insurer qualifies for an exemption pursuant to subsection (1) but subsequently no longer qualifies for that exemption because of changes in premium as reflected in the insurer's most recent annual statement or in the most recent annual statements of the insurers within the insurance group of which the insurer is a member, the insurer has 1 year following the year in which the threshold was exceeded to comply with the requirements of [sections 1 through 9]."

12. Page 4, line 30.

Following: "person"

Insert: "under [sections 1 through 9]"

Strike: "confidential" through "treated as"

Insert: "recognized as proprietary and"

Following: "secrets"

Insert: "."

13. Page 5, line 1.

Strike: "as defined in 30-14-402. As a trade secret the"

Insert: "The"
Following: "information is"
Insert: "confidential by law and"

14. Page 5, line 2.
Following: "discovery,"
Insert: "the provisions of 2-6-102,"
Following: "Act"
Insert: ", 5 U.S.C. 552"

15. Page 5, line 9.
Following: "may"
Insert: ", on request,"
Following: "information"
Insert: ", including proprietary and trade secret documents and materials,"

16. Page 5, line 12.
Following: "verify"
Insert: "in writing"

17. Page 5, line 14.
Following: "receive"
Insert: "ORSA-related"
Following: "information"
Insert: ", including otherwise confidential and privileged documents, materials, or other information that may include proprietary and trade secret information or documents,"

18. Page 5, line 28.
Following: "(e) require"
Insert: "prompt"

19. Page 6.
Following: line 9
Insert: "(8) Information in the possession of or control of the NAIC or a third-party consultant pursuant to [sections 1 through 9] is confidential by law and privileged, is not admissible in evidence in any private civil action, and is not subject to 2-6-102, subpoena, or discovery."
Renumber: subsequent subsection

20. Page 8, line 11 through line 12.
Strike: "after the operative" on line 11 through "manual" on line 12

21. Page 9, line 12.

Following: "(3);"

Insert: "or"

22. Page 11, line 10.

Following: "request."

Insert: "A report under this subsection (3)(c) is required after the commissioner has adopted rules as provided in [section 16]."

23. Page 11, line 13.

Strike: "(1)"

24. Page 11, line 16 through line 17.

Strike: subsection (2) in its entirety

25. Page 11, line 19 through line 20.

Strike: "subsections" on line 19 through "(5)" on line 20

Insert: "subsection (9)"

26. Page 11, line 27 through page 12, line 5.

Strike: subsection (4) in its entirety

Insert: "(4) Subject to the conditions in subsection (4)(c), the commissioner may, to assist in the performance of the commissioner's duties, share:

(a) confidential information with other state, federal, and international regulatory agencies and with the NAIC and its affiliates and subsidiaries upon agreement that the confidential information will be kept confidential; and

(b) only confidential information as defined in subsections (10)(a)(i)(A) and (10)(a)(i)(D) with:

(i) the actuarial board for counseling and discipline or its successor upon a request that states the confidential information is required for use in professional disciplinary proceedings; and

(ii) state, federal, and international law enforcement officials; and

(c) the information under this subsection (4) only if the recipient of the information has the legal authority to agree, and the recipient has agreed, to maintain the confidentiality and privileged status of the documents, materials, data, and other information in the same manner and to the same extent as required for the commissioner.

(5) (a) The commissioner may receive documents, materials, data, and other information, including otherwise confidential and privileged documents, materials, data, and other information, from:

(i) the NAIC and its affiliates and subsidiaries;

(ii) regulatory or law enforcement officials of other foreign or domestic jurisdictions; and

(iii) the actuarial board for counseling and discipline or its successor.

(b) The commissioner shall maintain as confidential or privileged any documents, materials, data, or other information received from the entities listed in subsection (5)(a) with notice or the understanding that the documents, materials, data, or other information is confidential or privileged under the laws of the jurisdiction that is the source of the documents, materials, data, or other information."

Renumber: subsequent subsections

27. Page 12, line 7.

Strike: "subsection (4)"

Insert: "this section"

28. Page 12, line 9.

Strike: "subsections (4) and (5)"

Insert: "this section"

29. Page 12, line 12.

Strike: "subsection (1)"

Insert: "this section"

30. Page 12.

Following: line 13

Insert: "(9) The confidential information defined in subsections (10)(a)(i)(A) and (10)(a)(i)(D) may:

(a) be subject to subpoena for the purpose of defending an action seeking damages from the appointed actuary submitting the related memorandum in support of an opinion submitted under 33-2-521 or a principle-based valuation report developed pursuant to [section 13(3)(c)] by reason of an action required by [sections 10 through 16];

(b) be otherwise released by the commissioner with the written consent of the company; or

(c) no longer be confidential for all portions after any portion of a memorandum in support of an opinion submitted under 33-2-521 or a principle-based valuation report developed under [section 13(3)(c)] is cited by the company in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is released by the company to the news media."

Renumber: subsequent subsections

31. Page 12, line 20.

Strike: "(8)(a)(ii)(A)"

Insert: "(10) (a) (ii) (A) "

32. Page 12, line 27.

Strike: "associated"

Insert: "other"

33. Page 13, line 8.

Strike: "This"

Insert: "The"

Following: "information"

Insert: "under this subsection (10) (a) (i) (E) "

34. Page 13, line 10.

Strike: "(8) (a) (i) (E) "

Insert: "(10) (a) (i) (E) "

35. Page 23, line 13 through line 14.

Strike: "In addition" on line 13 through "requirements" on line 14

Insert: "For policies issued prior to the operative date"

36. Page 25, line 24.

Following: "insurer that"

Insert: ", if not remedied promptly,"

37. Page 29, line 26.

Following: "commissioner, is"

Insert: "either directly or through its affiliates"

38. Page 33, line 21.

Following: "to the insurer"

Insert: "to the best of the controlling person's knowledge and belief"

39. Page 34, line 20.

Following: "statement,"

Insert: "any summary of the registration statement,"

40. Page 37, line 28 through page 38, line 21.

Strike: subsection (1) through subsection (4) in their entirety

Insert: "(1) Documents, materials, and other information in the possession or control of the commissioner that are obtained by or disclosed to the commissioner or any other person in

the course of an examination or investigation made pursuant to 33-2-1115 and all information reported pursuant to 33-2-1104(3)(1), 33-2-1104(3)(m), 33-2-1111, and 33-2-1113 must be confidential by law and privileged, are not subject to 2-6-102, subpoena, or discovery, and are not admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials, and other information to further any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner may not otherwise make the documents, materials, or other information public without the prior written consent of the insurer to which the documents, materials, or other information pertains unless the commissioner, after giving notice and an opportunity to be heard to the insurer and the insurer's affiliates who would be affected, determines that the interest of policyholders, shareholders, or the public would be served by the publication. On a determination that the interest of policyholders, shareholders, or the public would be served, the commissioner may publish all or any part of the documents, materials, or other information in a manner that the commissioner considers appropriate.

(2) Neither the commissioner nor any person who receives documents, materials, or other information while acting under the authority of the commissioner, or with whom the documents, materials, or other information is shared under [sections 10 through 16], 33-2-521 through 33-2-529, 33-2-531, 33-2-537, and this section, may be required or permitted to testify in a private civil action concerning any confidential documents, materials, or information subject to subsection (1).

(3) To assist in the performance of the commissioner's duties, the commissioner:

(a) may, subject to subsection (3)(b), share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (1), with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, including members of a supervisory college. To receive the shared documents, materials, or other information, the recipient shall verify in writing that the recipient has the legal authority to maintain confidentiality and agree in writing to maintain the confidentiality and privileged status of the documents, materials, or other information.

(b) may share confidential and privileged documents, materials, or other information reported pursuant to 33-2-1111(7) only with insurance regulators of states having statutes or regulations substantially similar to subsection (1) and only if the respective insurance regulators have agreed in writing not to disclose the documents, materials, or other information;

(c) may receive documents, materials, or other information,

including otherwise confidential and privileged documents, materials, or other information from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions; and

(d) shall maintain as confidential or privileged any document, materials, or other information received under subsection (3)(c) with notice or the understanding that the document, materials, or other information is confidential or privileged under the laws of the jurisdiction that is the source of the document, materials, or information."

41. Page 38, line 22.

Strike: "(5)(a)"

Insert: "(4)(a)"

Renumber: subsequent subsections

42. Page 38, line 25.

Strike: "section"

Insert: "subsection (4)"

43. Page 39, line 7.

Following: "affiliates"

Insert: "and subsidiaries"

44. Page 39, line 8.

Following: "affiliates"

Insert: "and subsidiaries"

45. Page 39, line 10 through line 13.

Strike: subsection (6) in its entirety

Insert: "(5) The sharing of information by the commissioner pursuant to [sections 10 through 16], 33-2-521 through 33-2-529, 33-2-531, 33-2-537, and this section does not constitute a delegation of regulatory authority or rulemaking. The commissioner is solely responsible for the administration, execution, and enforcement of the provisions of [sections 10 through 16], 33-2-521 through 33-2-529, 33-2-531, 33-2-537, and this section."

Renumber: subsequent subsections

46. Page 39, line 15.

Following: "subsections"

Insert: "(3) and"

Strike: "and (5)"

47. Page 39, line 18 through line 22.

Strike: subsections (8) and (9) in their entirety

Insert: "(7) Documents, materials, and other information in the possession or control of the NAIC pursuant to [sections 10 through 16], 33-2-521 through 33-2-529, 33-2-531, 33-2-537, and this section are confidential by law and privileged, are not admissible in evidence in a private civil action, and are not subject to 2-6-102, subpoena, or discovery."

48. Page 41, line 1.

Strike: "deduction"

Insert: "reduction"

49. Page 41, line 2.

Following: "(6)."

Insert: "Credit must be allowed under subsections (2), (3), or (4) only in respect to cessions of those kinds or classes of business that the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a U.S. branch of an alien assuming insurer, in the state through which the branch of the alien assuming insurer entered and is licensed to transact insurance or reinsurance."

50. Page 41, line 6.

Following: "accredited"

Insert: "by the commissioner"

51. Page 42, line 11.

Following: "fund."

Insert: "The assuming insurer shall submit to examination of its books and records by the commissioner and shall bear the expense of examination."

52. Page 48.

Following: line 11

Insert: "(10) A ceding insurer shall take steps:

(a) to manage the reinsurance recoverables proportionate to the ceding insurer's own book of business. A domestic ceding insurer shall provide notice to the commissioner within 30 days after:

(i) the reinsurance recoverables from any single assuming insurer or group of affiliated assuming insurers exceeds 50% of the domestic ceding insurer's last reported surplus to policyholders; or

(ii) a determination that the reinsurance recoverables from any single assuming insurer or group of affiliated assuming insurers is likely to exceed the limit in subsection (10)(a)(i).

(b) to diversify its reinsurance program. A domestic ceding insurer shall notify the commissioner within 30 days after ceding

to any single assuming insurer or group of affiliated assuming insurers more than 20% of the ceding insurer's gross written premium in the prior calendar year or after the domestic ceding insurer has determined that the reinsurance ceded to any single assuming insurer or group of affiliated assuming insurers is likely to exceed the 20% limit.

(c) The notifications made pursuant to this subsection (10) must demonstrate that the exposure is safely managed by the domestic ceding insurer."

Renumber: subsequent subsection

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